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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

QUI HUO,

Plaintiff and Respondent,

v.

DAN YAN,

Defendant and Appellant.

E069610

(Super.Ct.No. FAMSS1708308)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven J. Singley,
Judge. Affirmed.

Demidchik Law Firm, Monica Blut and Robert Grandon for Defendant and
Appellant.

The Law Office of Ronald Freeman and Ronald L. Freeman for Plaintiff and
Respondent.

I. INTRODUCTION

Defendant and appellant, Dan Yan, appeals from the superior court's orders (1) denying Yan's petition for a three-year, domestic violence restraining order against her former paramour, plaintiff and respondent, Qui Huo, and (2) granting Huo's petition for the same order against Yan, pursuant to the Domestic Violence Prevention Act (DVPA). (Fam. Code, § 6200 et seq.) The orders were issued following a November 2, 2017, combined hearing on the petitions.

Over Yan's objection, the court admitted a video recording taken on September 24, 2017, showing Yan repeatedly striking Huo inside Yan's home with a wooden ladle and a water bottle. Yan had moved in limine to exclude the video on the grounds its admission would violate her privacy rights and Penal Code section 632.¹ In support of her motion, Yan testified that Huo had placed video surveillance cameras throughout Yan's home, without Yan's knowledge. Huo denied this and claimed Yan knew, on September 21, that there were video surveillance cameras in the home. The court found Yan's testimony not credible and credited Huo's testimony that Yan knew there were video surveillance cameras in the home. Thus, the court found Yan did not have an objectively reasonable expectation of privacy when the video was made, and section 632 did not prohibit the video's admission.

¹ Undesignated statutory references are to the Penal Code.

In this appeal, Yan essentially claims the court abused its discretion in admitting the video because its admission violated her privacy rights and section 632. We find no abuse of discretion and affirm the challenged orders.

II. FACTS AND PROCEDURAL BACKGROUND

A. *Overview*

Yan and Huo are Chinese nationals and were in a romantic relationship for several years, beginning in 2014. They have a child who was born in the United States in February 2016. On September 28, 2017, the court issued temporary domestic violence restraining orders against each party in favor of the other. A hearing on the parties' respective petitions for permanent restraining orders against each other was continued from October 11 to October 24, then from October 24 to November 2. On October 24, the court ordered Huo's counsel to provide Yan's counsel with a copy of the disputed video recording, taken inside the Chino Hills home on September 24 and showing Yan hitting or striking Huo. Yan's counsel received a copy of the video on October 27.

B. *Yan's Motion in Limine to Exclude the September 24 Video*

On November 2, shortly before the hearing on the parties' petitions for permanent restraining orders, Yan filed a motion in limine, captioned "evidentiary objections," to exclude the September 24 video recording from evidence on the ground its admission would violate Yan's privacy rights and section 632. In her motion, Yan claimed the video recording was taken by a video camera that Huo had installed inside Yan's Chino Hills home without Yan's knowledge.

In her motion, Yan explained that, on September 21, Huo “visited” Yan and their child in the Chino Hills home, threatened Yan with a knife, and threatened to take the child with him back to China. Yan called authorities and Huo was arrested. Huo returned to the home on September 24 and again argued with Yan. Between October 27 to 31, after Yan received a copy of the September 24 video from Huo’s counsel, Yan contacted her home security service, ADT, and discovered that video cameras had been hidden inside the ADT motion detectors throughout her Chino Hills home, including in the bedrooms.

C. The Evidence Code Section 402 Hearing on Yan’s Motion

On November 2, before the hearing on the parties’ petition, the court conducted an initial hearing to determine whether the September 24 video was admissible. (Evid. Code, § 402.) Both Yan and Huo testified at the initial hearing.

1. Huo’s Testimony

Huo testified he currently lived in China, that he and Yan were separated, but he, Yan, and their child had been living in the Chino Hills home. On September 21, Huo and Yan argued because Huo had “found some condoms in the house.” They also argued about “the surveillance video, the camera[s] in the house.” Huo installed “the camera[s]” on September 21 after ADT’s “initial installation,” because Huo and Yan intended to hire “a babysitter, a nanny.” According to Huo, Yan knew, on September 21, that Huo installed surveillance cameras in the house on September 21, and Yan did not ask Huo to remove the cameras. On September 23, after Huo was released from custody, Huo

installed another surveillance camera in the kitchen. This was the camera that took the September 24 video recording showing Yan striking Huo.

2. Yan's Testimony

Yan testified that she never consented to Huo installing any surveillance cameras in her home. She was the home's sole owner, and Huo "lived on the first floor in the living room," but he was a "guest," not a "resident." Yan first realized there were "video surveillance cameras" in the home on September 21, when she noticed some "wall powder" had fallen on the floor. That day, she asked Huo, "Did you install any surveillance video camera[s]?" and he said, "no."

Yan also testified she first discovered that Huo had installed video surveillance cameras in the home on *September 27*, when she saw Huo call the police and tell them that he had "the surveillance video to show."² Yan later contacted ADT. On October 30, ADT came to Yan's home, inspected its motion detectors, and told Yan that its motion detectors had been replaced by video surveillance cameras. Huo was married "[i]n China" (not to Yan), and he "rarely" came to the United States. When he did come to the United States, he "sometimes live[d]" in Yan's home. Huo had "transferred" \$1.7 million to Yan, but Yan denied that the money was for Yan to buy a home for Yan and Huo to live in together.

² Yan may have meant to say the date was September 24, not September 27.

3. The Court's Ruling on Yan's Motion in Limine

The court found that Yan's testimony at the initial hearing lacked credibility, including her testimony that Huo "was merely a guest" in the Chino Hills home and that Yan did not know, before September 24, that there were surveillance cameras in the home. Thus, the court found Yan did not have "an objectively reasonable expectation of privacy" at the time the September 24 video was made, and denied Yan's motion to exclude the video. The video was deemed admissible, subject to Huo laying a proper evidentiary foundation for its admission.

D. The Hearing on the Parties' Petitions

After denying Yan's motion, the court conducted an evidentiary hearing on the parties' petitions. Huo again testified that, on September 21, he and Yan argued about "a condom" Huo found in the home and the surveillance cameras. Huo "chased" Yan outside the home, because Yan threatened to call the police, but Huo did not threaten Yan with a knife, chase Yan with a knife, or threaten to take their child with him to China. Huo was arrested on September 21 and returned home on September 22. On September 23, he "connected the wiring" to activate the surveillance cameras which had previously been installed. Thus, on September 24, Yan knew the surveillance cameras were recording in the home.

On September 24, Huo and Yan had another argument in the home, and Yan struck Huo on his "head, . . . body, and . . . back." Over Yan's objection, the court admitted the September 24 video showing Yan striking Huo with a bottle of drinking

water and a wooden ladle. Following that incident, and on the night of September 24, Huo drove his neighbor's vehicle and "chase[d]" Yan in her vehicle because he "was looking" for Yan, but he denied striking Yan's vehicle with his neighbor's vehicle. Huo placed his and Yan's child in a safety seat, in the back seat of his neighbor's vehicle. He did not have the child's passport.

Yan testified that Huo drank a "lot[] of alcohol everyday," and on September 21, Yan found an empty bottle of wine on the first floor of her Chino Hills home. The condoms Huo found in the home belonged to Yan's classmate, who had stayed in the home for over two months. On September 21, Huo threatened to kill Yan with a knife while he was holding his and Yan's child. Yan ran out of the house, called the police, and Huo was arrested.

On September 24, Yan did not know there were surveillance cameras in the home. That evening, Yan was "[v]ery angry" because Huo told Yan he had "been with many women," and he was not going to marry Yan. Yan and Huo argued, and Yan struck Huo in the home because he had been "flirting" with other women, she wanted him to leave, and she feared for her child's safety. Yan left the home but did not call the police because she had "already hit" Huo with the wooden spoon, and she thought that if she called the police, it "[would] not be very good" for her or the child. After Yan left, Huo borrowed the neighbor's vehicle and used it to "chase" Yan in Yan's vehicle. Huo tried to strike Yan's vehicle with the neighbor's vehicle while Huo had the child in the front seat of the neighbor's vehicle, without a safety seat. The neighbor's vehicle sustained

visible damage, and Yan saw the child fall from the front seat to the floor of the neighbor's vehicle.

Following the parties' testimony and the court's admission of the video, Huo's counsel argued that Yan's testimony was inconsistent and the video showed that Yan physically attacked Huo. Yan's counsel argued the evidence showed that, on September 21, Huo threatened Yan with a knife while he was holding their child, and Huo was arrested. Then, on September 24, Huo "set up" Yan by telling her things he knew would upset her, and "allowed" Yan to strike him because he knew the video surveillance cameras were recording the incident.

The court found that Yan committed an act of domestic violence, and granted Huo's petition. Again, the court found Yan's testimony not credible, and denied Yan's petition because no corroborating evidence supported it.

III. DISCUSSION

Yan essentially claims the court abused its discretion in admitting the September 24 video showing her repeatedly striking Huo with a wooden ladle and water bottle. She claims the video's admission violated her privacy rights and section 632.

A. Applicable Legal Principles

Section 632 provides: "(a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic . . . recording device . . . record[s] the confidential communication . . . shall be punished . . . [¶] . . . [¶] (c) [The term] 'confidential communication' means any communication carried on in

circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made . . . in any . . . circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded. [¶] (d) Except as proof in an action or prosecution for violation of this section, evidence obtained as a result of . . . recording a confidential communication in violation of this section is not admissible in any judicial . . . proceeding.”

“For purposes of section 632, ‘communication’ includes conduct” (*People v. Nazary* (2010) 191 Cal.App.4th 727, 746.) Section 632 “prohibits unconsented-to recording or monitoring” and is intended to protect the privacy rights of parties to confidential communications to prevent the communications from being disseminated “to an unannounced listener,” that is, to a recording device or another person. (*Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377, 1389.) A communication is confidential, for purposes of section 632, if a party to the communication has an objectively reasonable expectation that it is *not* being overheard or recorded. (See *id.* at pp. 1389-1390; *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774-776.) Conversely, a communication is *not* confidential if no party to it has an objectively reasonable expectation to believe it *is* being overheard or recorded. Thus, section 632 does not prohibit the admission, in any judicial proceeding, of a recorded communication if no party to the communication had an objectively reasonable expectation to believe the communication was *not* being overheard or recorded. (§ 632, subds. (c), (d).)

B. The Court Did Not Abuse Its Discretion in Admitting the Video Into Evidence

At the initial hearing on Yan’s motion in limine, the court found, as a preliminary fact necessary to the video’s admission (Evid. Code, § 402), that Yan *knew* there were video surveillance cameras in her home before September 24, and, therefore, that Yan did not have an objectively reasonable expectation of privacy on September 24 when a video camera recorded her repeatedly striking Huo. Thus, the court determined that section 632 did not preclude the video’s admission. (Pen. Code, § 632, subds. (c), (d).)

The question presented in this appeal is whether the court abused its discretion in denying Yan’s motion to exclude the video pursuant to section 632. “The abuse of discretion standard of review applies to any ruling by a trial court on the admissibility of evidence. [Citation.] . . . Under this standard, a trial court’s ruling will not be disturbed, and reversal . . . is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.) Here, we find no abuse of discretion.

In her motion in limine to exclude the video and in her testimony in support of her motion, Yan claimed that Huo was only a “guest” in her home, and Yan did not know, on September 24, that Huo had placed video surveillance cameras in the home. The court reasonably discredited Yan’s testimony because Huo testified he placed video surveillance cameras in the home on September 21, with Yan’s knowledge, because he and Yan were planning to hire a babysitter or nanny. On September 21, Huo and Yan

argued about the cameras, but Yan did not ask Huo to remove the cameras. Huo was not a guest in the home, but lived in the home with Yan and their child when he was visiting the United States from China. Yan then admitted that Huo “sometimes live[d]” in her home.

Based on this evidence, the court reasonably determined that Yan knew there were video surveillance cameras in the home on September 24; that Yan, therefore, did not have a reasonable expectation of privacy when the video was taken on September 24; and that section 632, therefore, did not prohibit the video’s admission. (§ 632, subds. (c), (d); see *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968 [appellate courts “defer to the trier of fact on issues of credibility.”].)

In her briefing, Yan relies on authorities which are inapt to the question she raises in this appeal—whether the court abused its discretion in admitting the September 24 video at the hearing on the parties’ DVPA petitions. Throughout her briefing, Yan confuses the DVPA proceedings with a civil action by Yan against Huo for violating Yan’s privacy rights or a criminal action against Huo for violating section 632. Yan’s arguments also assume that Yan had a reasonable expectation of privacy in her home on September 24, but do not address the reasonableness or the substantial evidence supporting the court’s contrary determination that Yan’s initial hearing testimony lacked credibility; that Yan, therefore, did not have a reasonable expectation of privacy on September 24 when the video recorded her repeatedly striking Huo; and section 632, therefore, did not preclude the video’s admission.

IV. DISPOSITION

The orders granting Huo’s petition for a three-year domestic violence restraining order against Yan and denying Yan’s petition for a similar restraining order against Huo, are affirmed. Huo shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278.)

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FIELDS
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.